

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 293 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PARBATSINH J VAGHELA

Versus

STATE OF GUJARAT  
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Appearance:

MR NITIN M AMIN for Petitioner  
PUBLIC PROSECUTOR for Respondent No. 1  
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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 11/02/97

ORAL JUDGEMENT

(Per Gokhale, J.)

This is an appeal against the order of conviction under section 302 of the Indian Penal Code convicting the appellant herein and sentencing him for RI for life in Sessions Case No.298 of 1988. The charge against the accused was that on 13th June 1988 at about 10.30 AM while residing in his SRP quarters he burnt his wife-Pravinaben to death by pouring kerosene over her. The accused was charged under section 302 of the IPC and was tried by the learned Addl. City Sessions Judge, Ahmedabad.

2 The principal document which is on record is the dying declaration of Pravinaben which is at Exh.29. In this dying declaration which was recorded before the Executive Magistrate the deceased has in terms stated that it is her husband who burnt her by pouring kerosene. She has studied up to IX standard and she has signed on the dying declaration. Prior to the recording of this statement before the Executive Magistrate she has also stated to Dr Chhatrapati who treated her at the Civil Hospital that she had been burnt by pouring kerosene by her husband. Dr Chhatrapati has recorded her statement in the case paper on the very same day which is taken on record at exh.19. The deceased has stated in her dying declaration that her husband used to demand money from her and had told her to leave his house and has finally poured kerosene on her as stated above. Whereas the incident took place at about 10.30 AM in the morning this statement was recorded at 1.25 PM on the same day.

3 It is material to note that deceased was aged about 20 years and the accused and deceased were married for about 4 years and she had a minor daughter of one-and-half years old at the time of the incident.

4 On behalf of the accused-appellant much was sought to be made out from the statement of the father of the deceased one Bhagwansinh Ramsinh who was examined as PW No.2. In his statement he has stated that his daughter was being harassed. He has further stated that few days prior to the incident his daughter had shown to him three photographs wherein the accused was in close proximity with another lady. Those photographs are on record at Mark 9/7. He has stated in his statement that because of that the relations between the deceased and appellant-accused had become further strained. That on coming to know his daughter had been burnt, he reached Ahmedabad from his residence at Kheda. His daughter was alive at that time and told him that she had been burnt by accused. He has however stated in his cross-examination that earlier when the deceased was sent

to her husband's place she was reluctant to go and at that time she stated that if he forces her to go to her husband's place, she would burn herself to death. It is this statement made in the cross-examination that was sought to be highlighted by the accused in his written statement (exh.43) wherein he stated that the accused burnt herself by pouring kerosene on her body. There is no reason to disbelieve the dying declaration given by the deceased. A lady of 20 years of age and with a child of one and half years had no reason to commit suicide. Apart from that the place where this incident took place is the verandah of the house where she was washing clothes at the relevant time. She was in a sitting posture and it is only the upper part of her body that was burnt. If she wanted to commit suicide, as was sought to be urged by the learned counsel for the appellant, she could have very well committed the same in the kitchen. In the instant case only upper part of the body was burnt which is clear from the post mortem report. The learned Addl. City Sessions Judge has dealt with this defence of the accused in paragraph no.37 of the judgment in a very succinct manner and we reproduce the same as under:

"37. The presence of the accused at the scene

of offence and his involvement in the crime also acquires a definite shape from the fact that the medical evidence on record clearly shows that only the upper limbs of the deceased Pravina were burnt and her lower limbs were totally saved. It is nobody's case that this was an accidental death. Therefore, it could be either a suicidal death or a homicidal death. If it was a suicidal death, it is less probable that her lower limbs would be totally saved. Her anterior and posterior portions from and above the abdomen were burnt. Both her hands were also burnt, and her face was also burnt. A burnt patch was also seen on lateral aspect of left upper buttock region. These kind of burns are more likely to be caused if Pravina was washing clothes in a sitting posture as stated by her in her dying declaration. She would not commit suicide in a sitting posture. If she committed suicide, she would do it either in the kitchen or inside the bath room, but not in the open verandah where the place at which the crime was committed is shown in the sketch exh.17. Therefore, there can be no doubt about the fact that while she was washing clothes, her husband sprinkled kerosene on her and set her afire as stated by the deceased in

her dying declaration."

5 For these reasons, the theory of suicide cannot be accepted. The place where the incident has taken place along with the medical evidence clearly goes to prove that it is a homicidal death and it cannot amount to anything else except the murder under section 302 of IPC.

6 Another submission which was urged before us is that it was two days after the incident that the deceased expired and the cause of death was septicemia which developed during the treatment. We are not in a position to accept this submission also. There is no factor which can be said to be responsible for this septicemia other than the burn injuries which the deceased suffered. For these reasons, we find no infirmity whatsoever in the judgment delivered by the learned Addl. City Sessions Judge. The same is hereby confirmed. The appeal is dismissed.

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(mohd)